BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION

ALEJANDRO MENDOZA	)	
Claimant	)	
VS.	)	
	)	Docket No. 1,008,559
DCS SANITATION	)	
Respondent	)	
AND	)	
	)	
ZURICH U.S. INSURANCE COMPANY	)	
Insurance Carrier	)	

ORDER

Claimant appealed the December 2, 2005, Award entered by Administrative Law Judge Pamela J. Fuller. The Board heard oral argument on March 1, 2006.

APPEARANCES

Stanley R. Ausemus of Emporia, Kansas, appeared for claimant. Richard L. Friedeman of Great Bend, Kansas, appeared for respondent and its insurance carrier.

RECORD AND STIPULATIONS

The record considered by the Board and the parties' stipulations are listed in the Award.

ISSUES

Claimant injured his right ankle on December 5, 2002, as he was walking from a parking lot to respondent's business office to pick up his paycheck. In the December 2, 2005, Award, Judge Fuller determined claimant's accident did not arise out of and in the course of his employment with respondent. Consequently, the Judge denied claimant's request for workers compensation benefits.

Claimant contends Judge Fuller erred. Claimant argues his accident is compensable under the Workers Compensation Act because he was assisting a co-employee by carrying a briefcase, which held respondent's paychecks, from the parking lot to respondent's office. Accordingly, claimant requests the Board to reverse the December 2, 2005, Award. Claimant asks the Board to award him $459.96 in temporary total disability benefits, permanent disability benefits for a 15 percent functional impairment to the right lower extremity, payment of outstanding medical bills and unpaid prescriptions, and future and unauthorized medical benefits.

Conversely, respondent and its insurance carrier contend the Award should be affirmed. They argue claimant's accident did not arise out of and in the course of his employment and, therefore, it is not compensable. In the alternative, they contend claimant sustained an 11 percent impairment to the right lower extremity.

The issues before the Board on this appeal are:

1. Did claimant's accident arise out of and in the course of employment with respondent?

2. If so, what is the nature and extent of claimant's injury and disability?

3. What, if any, temporary total disability benefits are due?

4. What, if any, outstanding medical and prescription expenses should be paid?

5. Is claimant entitled to future and unauthorized medical benefits?

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record and considering the parties' arguments, the Board finds and concludes the Award should be affirmed.

The facts are not in dispute. On December 5, 2002, claimant fell after he parked his car and began walking towards respondent's office to pick up his paycheck. As a result of the fall, claimant fractured his right ankle.

Respondent leases office space in a building that contains at least two other businesses. The parking lot where claimant parked was adjacent to that building and the parking lot was used by several other businesses in the immediate area. A restaurant was adjacent to the parking lot opposite the building that contained respondent's office.

Claimant did not reach respondent's office premises before falling. The sidewalk area where claimant fell leads to respondent's office but, more importantly, it also leads to the other tenants in the building.

At the time of the fall claimant was carrying a briefcase that held the respondent's paychecks. It was not part of claimant's regular job duties to take the paychecks to respondent's office but, due to the icy conditions, respondent's secretary asked claimant to carry the briefcase for her when she saw him in the parking lot.

It is important to note that claimant was injured while going to respondent's business office to pick up his paycheck. Claimant did not work at that location as he worked at one of the local meat packing plants, where respondent had a contract to perform sanitation services.

As picking up one's paycheck is an incident of employment, there is no question that claimant's accident would have been compensable under the Workers Compensation Act had he fallen on respondent's premises.[1] Moreover, there is little question that claimant's accident would have arisen out of and in the course of his employment if he had been sent to the parking lot to retrieve the briefcase after first arriving at respondent's office.

But claimant fell on the sidewalk before reaching respondent's premises. Accordingly, the only way that his accident would be compensable under the Act under these circumstances is if his travel to respondent's office would be considered a business errand or special-purpose trip. In *Ridnour*,[2] the Kansas Court of Appeals wrote:

> Kansas case law has recognized several exceptions to the K.S.A. 2004 Supp. 44-508(f) going and coming rule. One such exception provides that injuries incurred while going and coming from places where work-related tasks occur can be compensable where the traveling is required in order to complete some special work-related errand or special-purpose trip in the scope of employment.[3]

Respondent directed its employees to come to its business office to pick up their paychecks. That arrangement benefitted respondent. Nonetheless, the Board does not believe claimant's travel to respondent's office comprised a business mission or errand.

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[1] See *Palmer v. Lindberg Heat Treating*, 31 Kan. App. 2d 1, 59 P.3d 352 (2002) and *Palmer v. Lindberg Heat Treating*, No. 242,111 (Kan. WCAB Aug. 3, 2001).

[2] *Ridnour v. Kenneth R. Johnson, Inc.*, 34 Kan. App. 2d 720, 124 P.3d 87 (2005), *petition for review filed*.

[3] *Id.* at Syl. ¶ 5. Also see *Brobst v. Brighton Place North*, 24 Kan. App. 2d 766, 774, 955 P.2d 1315 (1997).

Furthermore, this travel should be treated no differently than any worker traveling to their regular work site.

Because he fell before reaching respondent's premises, claimant's accident is barred by the "going and coming" rule of K.S.A. 2002 Supp. 44-508(f):

> The words "arising out of and in the course of employment" as used in the workers compensation act shall not be construed to include injuries to the employee occurring while the employee is on the way to assume the duties of employment or after leaving such duties, the proximate cause of which injury is not the employer's negligence. An employee shall not be construed as being on the way to assume the duties of employment or having left such duties at a time when the worker is on the premises of the employer or on the only available route to or from work which is a route involving a special risk or hazard and which is a route not used by the public except in dealings with the employer. . . .

Claimant argues his accident is compensable as he was carrying the briefcase with the paychecks for a co-worker. But, under these particular facts, carrying the briefcase was merely ancillary to claimant's trip to respondent's office and such incidental act did not change the nature of claimant's visit to respondent's office. Put differently, carrying the briefcase did not transform claimant's visit to respondent's office into a "business mission" as he would not have been making the trip were it not for obtaining his paycheck.[4]

Tompkins[5] sets out the legal principle:

> The "dual purpose trips" rule mentioned in the briefs of the parties is discussed in Vol. 1, Larson, Workmen's Compensation Law, § 18.00, *et seq.*, and we quote:
>
> > "§ 18.00 Injury during a trip which serves both a business and a personal purpose is within the course of employment if the trip involves the performance of a service for the employer which would have caused the trip to be taken by someone even if it had not coincided with the personal journey. . . ."
>
> The author states that the many widely-assorted problems can be solved by the application of a lucid formula stated by Judge Cardozo in *Matter of Marks v. Gray*, 251 N. Y. 90, 167 N. E. 181, (1929) – a formula which, according to the

[4] *Tompkins v. Rinner Construction Co.*, 194 Kan. 278, 398 P.2d 578 (1965); *Repstine v. Hudson Oil Co.*, 155 Kan. 486, 126 P.2d 225 (1942).

[5] *Tompkins v. Rinner Construction Co.*, 194 Kan. 278, 398 P.2d 578 (1965).

author, when rightly understood and applied, has never yet been improved upon. Then follows this quotation from the *Marks* case:

> "We do not say that service to the employer must be the sole cause of the journey, but at least it must be a concurrent cause. To establish liability, the inference must be permissible that the trip would have been made though the private errand had been canceled. . . . The test in brief is this: If the work of the employee creates a necessity for travel, he is in the course of his employment, though he is serving at the same time some purpose of his own. . . . If, however, the work has had no part in creating the necessity for travel, if the journey would have gone forward though the business errand had been dropped, and would have been canceled upon failure of the private purpose, though the business errand was undone, the travel is then personal, and personal the risk." (§ 18.12.)

The text also cites *Barragar v. Industrial Comm.*, 205 Wis. 550, 238 N. W. 368, also reported at 78 A. L. R. 679, followed by an annotation beginning at page 684. The Barragar case adopts the test laid down in the Marks case, and paragraph No. 3 of the syllabus reads:

> "If the employee's work creates a necessity for travel, the trip at the outset is the employer's; if the journey would have proceeded although the business was dropped, it is the employee's trip."[6]

In conclusion, claimant was not on a business errand at the time of his accident and he had not reached respondent's premises. Consequently, his accident is not compensable under the Workers Compensation Act.[7] Claimant's request for benefits must be denied.

AWARD

WHEREFORE, the Board affirms the December 2, 2005, Award entered by Judge Fuller.

IT IS SO ORDERED.

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[6] *Id.* at 283-284.

[7] *Madison v. Key Work Clothes*, 182 Kan. 186, 318 P.2d 991 (1957).

Dated this ____ day of April, 2006.

BOARD MEMBER

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DISSENT

We respectfully disagree with the majority's determination that this fact situation is controlled by the "going and coming" rule codified in K.S.A. 2002 Supp. 44-508(f). Claimant worked at a different location than where he was going to pick up his paycheck. Respondent required its employees to travel to its business office to pick up their paychecks. Respondent directly benefitted from that practice. Accordingly, this transformed claimant's travel to a business errand. His carrying the briefcase containing respondent's paychecks only strengthens the argument that claimant was engaged in a business errand or special-purpose trip at the time of the accident. Consequently, claimant's accidental fall arose out of and in the course of his employment with respondent.[8]

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[8] See *Taylor v. Centex Construction Co.*, 191 Kan. 130, 379 P.2d 217 (1963); *Blair v. Shaw*, 171 Kan. 524, 233 P.2d 731 (1951); *Ridnour v. Kenneth R. Johnson, Inc.*, 34 Kan. App. 2d 720, 124 P.3d 87 (2005), *petition for review filed*.

c: Stanley R. Ausemus, Attorney for Claimant
Richard L. Friedeman, Attorney for Respondent and its Insurance Carrier
Pamela J. Fuller, Administrative Law Judge
Paula S. Greathouse, Workers Compensation Director